

**STATE OF VERMONT  
PUBLIC SERVICE BOARD**

Petition of Beaver Wood Energy Fair Haven, )  
LLC for a Certificate of Public Good, pursuant )  
to 30 V.S.A. § 248, to install and operate a )  
Biomass Energy Facility and an integrated wood )  
pellet manufacturing facility located north of )  
Route 4 in Fair Haven, Vermont, to be known as )  
the "Fair Haven Biomass Project" )

Docket No. \_\_\_\_

**MOTION FOR PRELIMINARY APPROVAL**

NOW COMES Beaver Wood Energy Fair Haven, LLC ("BWE"), and files this Motion for Preliminary Approval, requesting that the Board authorize the Petitioner to initiate certain limited construction activity in December of 2010 as more fully explained below.

**Introduction**

BWE has filed a Petition requesting a Certificate of Public Good for the construction and operation of a 29.5 MW biomass electric generating facility and fully integrated pellet manufacturing plant (the "Petition" and the "Project"). *Petitioner's Petition for Certificate of Public Good, dated November 2, 2010.* BWE hopes to finance the construction of the Project, at least in part, with a federal tax grant issued pursuant to Section 1603(a) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (the "Recovery Act" and the "Recovery Grant" respectively). The Board has recently reviewed other projects also seeking to qualify for the Recovery Grant, *e.g.* EOS Venture's solar project by initiating work in 2010. *Petition of EOS Ventures for Certificate of Public Good dated May 3, 2010 at ¶ 6.* If at all possible, BWE would

have sought this approval sooner. However, making this filing any earlier was simply not practicable and, even now, BWE is being compelled to file its Petition earlier than it would have done in the normal course because of the 2010 deadline.

In order to qualify for the Recovery Grant, BWE must, among other things, initiate construction of the electric generating portion of the Project prior to December 31, 2010 and continue limited construction activities during the pendency of the Petition. Qualifying for the Recovery Grant is extremely important to the successful financing of the Project as it could represent more than 20 percent of the Project's construction cost. Petitioner is cognizant of the fact that there is no express provision under Section 248 that speaks to this request. While Section 248(k) allows pre-Certificate construction under certain limited circumstances, Petitioner acknowledges that the circumstances contemplated by Section 248(k) are not present here. 30 V.S.A. § 248(k). However, Petitioner nonetheless contends that the authorization of the proposed limited construction activities would be consistent with the public good for several reasons. First, the proposed construction activities have been carefully selected to have minimal environmental impact. Second, the nature of the proposed activities is such that it will be relatively easy to return the Project site to its original condition if the Project does not obtain a Certificate of Public Good. Third, Petitioner is prepared to escrow sufficient funds to pay for any necessary site restoration expense. Fourth, not only is the Project a renewable energy project, it represents the first major renewable baseload project proposed for construction in the State in decades. Fifth, the Project is one of the first of a new generation of biomass facility and is much more efficient and has far fewer environmental impacts than prior biomass projects of its size. Accordingly, there is little

reason not to authorize the proposed construction activities and many good reasons for doing so.

1. **Section 1603 of the Recovery Act provides taxpayers a 30 percent cash grant for qualified property of an open loop biomass facility.**

Section 1603(a) of the Recovery Act provides that upon application the Treasury Department will provide a cash grant to each person who timely places in service “qualified property” of certain qualified renewable energy facilities – including a facility that uses open-loop biomass to produce electricity (a “qualified facility”). The Grant is payable in lieu of an investment tax credit (“ITC”) that would otherwise be available with respect to the qualified property of a qualified facility. 26 U.S.C. §48(d).

For an open-loop biomass facility, the ITC or Grant in lieu thereof is equal to 30 percent of the cost basis of the qualified property of the facility. 26 U.S.C. 48(a) and § 1603(b)(2) of the Recovery Act. For this purpose, qualified property includes all tangible property that is used as an integral part of the qualified facility. Section 1603(d)(1) of the Recovery Act and 26 U.S.C. § 48(a)(5)(d). Guidance released by the Treasury Department provides that property is an integral part of the qualified facility if the property is used directly in the facility, is essential to the completeness of the activity performed there (*e.g.*, using open-loop biomass to produce electricity), and is located at the site of the facility. *See “Payments for Specified Energy Property in Lieu of Tax Credits under the American Recovery and Reinvestment Act of 2009”, U.S. Treasury Department, Office of the Fiscal Assistance Secretary, July 2009/Revised March 2010, located at <http://www.ustreas.gov/recovery/docs/guidance.pdf> (the “Recovery Grant Program Guidance”) and “Payments for Specified Energy Property in Lieu of Tax Credits*

*Under the American Recovery and Reinvestment Act of 2009, Frequently Asked Questions and Answers, 'Beginning of Construction'”, located at <http://www.ustreas.gov/recovery/1603.shtml> (the “Recovery Grant FAQs”).*

**2. For qualified property that will be placed in service after 2010, construction of the qualified property must begin on or before December 31, 2010.**

For qualified property of an open-loop biomass facility not placed in service during 2009 or 2010, a Grant will only be provided if the qualified property is placed in service before January 1, 2014 and the construction of such property began on or before December 31, 2010 (the “Beginning of Construction Requirement”). Section 1603(a) of the Recovery Act and 26 U.S.C. §48(a)(5)(C)(ii). According to the guidance released by the Treasury Department, an applicant satisfies the Beginning of Construction Requirement either (1) when physical work of a significant nature begins on the qualified property of the qualified facility (“Physical Work Test”) or (2) when the applicant pays or incurs more than 5 percent of the total cost of the qualified facility (the “Cost Safe Harbor”). *See Part IV.C. of the Recovery Grant Program Guidance and Q1/A1 of the Recovery Grant FAQs.* As the Cost Safe Harbor cannot be achieved by BWE, BWE must meet the Physical Work Test to qualify for the Recovery Grant.

**3. In order for BWE to meet the beginning of construction requirement with respect to the Project, it must satisfy the Physical Work Test.**

In determining whether the Physical Work Test has been satisfied, both on-site and off-site work performed by the applicant and by other persons pursuant to a binding written contract are taken into account. *See Part IV.C. of the Recovery Grant Program Guidance and Q2/A2 of the Recovery Grant FAQs.* Moreover, as referenced above, only

physical work on qualified property of the qualified facility is counted for purposes of the Physical Work Test. *Id.* Finally, the Treasury Department has indicated that it will closely scrutinize any project that does not involve a continuous program of construction. Q5/A5 of the Recovery Grant FAQs.

Because off-site physical work that would satisfy the beginning of construction requirement cannot practically be performed within the required time periods, BWE needs to focus on and begin physical work on qualified property at the Project site. BWE has identified certain on-site construction activities that it can begin in 2010 that should enable the Project to qualify for the Recovery Grant (these limited construction activities are described in the pre-filed testimony of William Bousquet). After commencing these construction activities, BWE needs to maintain a continuous program of construction with respect to the Project until its completion, thereby qualifying for the Recovery Grant. *Id.*

**4. The Recovery Grant is Extremely Important to the Project's Successful Financing.**

The total cost of the Project will be approximately \$250 million. *Testimony of Ted Verrill* at pg. 2. BWE intends to secure term debt financing equal to approximately sixty percent of total Project cost, or \$150 million, and equity financing equal to approximately forty percent of total Project cost, or \$100 million. The equity financing is expected to consist of investments by BWE principals, BWE's joint development partner, other domestic and foreign investors, tax investors and a Recovery Grant equal to 30 percent of the cost basis of the qualified property of the Project which in this case should amount to at least twenty-one percent of total Project cost, or \$52.5 million. *Id.* at pg. 3.

If BWE is unable to secure the Recovery Grant, it will significantly complicate the Project's financing because in order to fill the \$52.5 million dollar gap in the Project's capital requirements, BWE will likely have to identify a partner that can make use of the long term investment tax credits that would be available in lieu of Recovery Grant. *Id.* at 4. The Recovery Grant program was created because of the collapse of the tax equity market during the recession. In the current economy, with the tax equity market remaining very weak, selling these tax credits for a price approaching \$52.5 million will be exceedingly difficult and could seriously jeopardize BWE's ability to successfully finance and thus complete the Project. *Id.*

5. **The Limited Construction Activities Proposed for late 2010-early 2011 were Carefully Chosen to ensure the Project Qualifies for the Recovery Grant while having Minimal Environmental Impact.**

BWE has chosen to perform work on property that is specifically eligible for the grant. *Testimony of William Bousquet* at 10-12. To qualify, the work must be continuous, disregarding unusual weather or seasonal work stoppage, and on a program of on-site construction under a "binding written contract" and to be completed in a reasonable time as shown on Petitioner's Exhibit WB-9, the 2010-11 Construction Activities Schedule, all as required by the statute. All construction activities were selected carefully so as not to have any effect on wetlands, endangered species, or archeological resources, and due to their limited use of water and the fact that they generate very little noise. *Id.* Various consultants engaged by BWE will provide testimony in each of their respective areas of expertise to confirm that the proposed construction activities will not have any negative environmental impacts and an agency approved traffic safety plan will be submitted also. *See Testimony of Craig Heindel,*

*Nicole Kesselring, Jeffrey Severson, Jennifer Conely, and Thomas Jamison.* If the Board so authorizes, the 2010-11 construction activities are planned to start on December 7th with excavations for the two truck scales. One week later excavation would take place for the fire/raw water tank. Setting foundation forms and placement of reinforcement and concrete will follow. Excavation, placement of underground pipe and backfill of makeup water lines and discharge lines will start concurrently with these foundations.

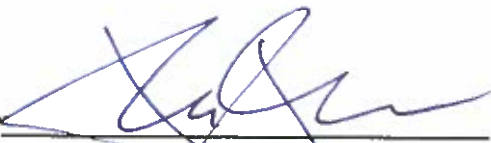
Continuation of work into 2011 is expected to follow the Construction Activities Schedule. Before any site work begins, BWE will install all proper limits of construction area fencing, erosion fencing and controls. *Id.* at 11-12. For a visual depiction of the proposed improvements, see Petitioner's Exhibit WB-2, the 2010-11 Construction Layout Plan. The items to be installed are identified and outlined in the Petitioner's Exhibit WB-9, Construction Activities Schedule. Costs of removal were estimated on the premise of leaving pipe, and road sub base that are below existing grades in place and leveling off the construction areas to current grades. Costs of construction and removal are set forth in Petitioner's Exhibit WB-10, 2010-11 Construction Activities and Costs. Petitioner is prepared to escrow sufficient funds to pay for the removal of the improvements if a permit does not issue. *Id.* at 12.

### **Conclusion**

As shown above, allowing the proposed construction activities will significantly improve the chances of successfully financing the Project while almost no offsetting societal costs or environmental impacts. Accordingly, Petitioner respectfully requests that the Board grant this Motion.

Dated at Rutland, Vermont this 2nd day of November, 2010.

KENLAN, SCHWIEBERT, FACEY & GOSS, P.C.

By   
Hans G. Huessy, Esq.  
Attorneys for Beaver Wood Energy Fair Haven,  
LLC